Mobil Oil Corporation, West Coast Pipe Lines *and* West Coast Independent Union. Case 31–CA–17741

July 19, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On April 18, 1990, Administrative Law Judge William J. Pannier III issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified.

The judge has found that the Respondent violated Section 8(a)(5) of the Act by refusing the Union's request for the source of information that led to the mandatory drug screening of three unit employees. Subsequent to the judge's decision, the Board issued its decision in *Pennsylvania Power Co.*, 301 NLRB 1104 (1991). Based on the rationale of that decision, as summarized below, we find that the Respondent did not unlawfully refuse to disclose the name of the person who reported drug use by the three employees, but it did violate Section 8(a)(5) by failing to provide a summary of the informant's report.

The Respondent has an established alcohol and drug control policy, which includes mandatory physical testing of employees suspected of drug use, even off-premises. At some time prior to February 16, 1986, an individual came to the Respondent's field superintendent and claimed knowledge about drug use by three of the Respondent's employees. Although the Respondent has no general policy of keeping its drug use information sources confidential, the informant here secured a guarantee of confidentiality before providing any details. The substance of the informant's report was then relayed to upper management, who relied on the report as the ''reasonable cause'' for insisting that unit employees Guy Rodgers, Ronn McFadden, and Gregory Gill submit to drug screening. All three employees eventually signed authorizations for screening, tested positive, went into treatment, received disability pay, were rehabilitated, and returned to duty. The Union filed a grievance over the matter and requested that the Respondent divulge the source and substance of the report that precipitated the screening demand. The Respondent flatly refused to supply the requested information, asserting that the information was confidential.

The judge reasoned that the Respondent had ''no basis for asserting a defense of confidentiality in view of the evidence presented in this case.'' According to the judge, the ''Respondent has not claimed that it feared retaliation against its informant. Nor has it presented any evidence that would support such a contention, had it been advanced.'' Nevertheless, the judge set forth his view of the evidentiary standards the Respondent would have had to satisfy in order to sustain a defense of retaliatory concern. In this regard, the judge would have required the Respondent to show evidence of past retaliation by the Union against employees who reported misconduct by coworkers. Alternatively, according to the judge, the Respondent would have had to show evidence of direct threats by union agents against the informant.

The Respondent argued before the judge and continues to contend that it should be free to maintain the confidentiality of its informant. The Respondent bases its position on the privacy rights of the information source[1] and a legitimate concern for possible retaliation against the informant. The Respondent further contends that if it is not able to maintain the confidentiality of its information sources, fellow employees or others may be deterred from coming forward with information regarding drug use by employees. Finally, the Respondent notes that the potential danger to life, property, and the environment from an accident on a petroleum pipeline caused or aggravated by a drug impaired employee is obvious. The Respondent urges that there is a public interest in protecting the confidentiality of those who reveal illegal drug use by its employees. We find these arguments persuasive.

In *Pennsylvania Power*, the Board applied the balancing-of-interests test endorsed by the Supreme Court in *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979), in evaluating an employer's claim of confidentiality as a defense for its refusal to provide information which supported a suspicion of drug use and lead to the drug testing of 16 employees. The Board determined that the union had a legitimate interest in having the requested information—including, inter alia, the names and addresses of informants who supplied information about drug use and summaries of their statements—in order to process a grievance about the drug testing. On the other hand, the Board found that the confidentiality interests related to the respondent's ''efforts to control possible drug-related impairment of employee job performance [were] entitled to unusually great weight.'' 301 NLRB 1104 at 1107. The Board gave particular emphasis to the clear connection between the drug informant confidentiality pledge and safety concerns related to the inherent dangers of the employer's production and transmission of electrical power, generated, in

[1] The Respondent argues that the privilege of confidentiality belongs solely to the informant, who alone can waive it.

some instances, by nuclear fuels. It also referred to the presumptive potential for harassment of informants in the investigation of criminal drug activity.

Based on the foregoing assessment of the competing interests involved in *Pennsylvania Power*, the Board found that the respondent's legitimate confidentiality interest in withholding the identity of informants outweighed the union's legitimate need for informants' names and addresses. It further found, however, that the respondent's confidentiality and other interests were not so great as to outweigh the union's need for any information about the respondent's basis for suspecting drug use by those employees who were forced to submit to drug testing. The respondent was required to provide the union with a summary of informants' statements, and its failure to have done so was found to be a violation of Section 8(a)(5).

The circumstances in this case are essentially the same as in *Pennsylvania Power*. The Union was processing a grievance about the mandatory drug testing of three employees. It had a legitimate interest in knowing the information which created the suspicion supporting the Respondent's demand that the employees be tested. The Respondent, on the other hand, had secured its information only after giving a specific pledge of confidentiality to its informant. We do not rely on the Respondent's claim that only the informant could thereafter waive confidentiality to permit his or her identification to the Union. See *New Jersey Bell Telephone Co.*, 289 NLRB 318, 319–320 (1988). We nevertheless find that the Respondent's own interest in maintaining a confidentiality pledge given in furtherance of its drug control policy is entitled to ''unusually great weight.'' The pledge of confidentiality is reasonable in light of the general potential for retaliation against informants in the investigation of criminal drug use. Furthermore, we agree with the Respondent that there is an obvious relationship between the drug informant confidentiality pledge and the prevention of personal injury and environmental disaster that could result from an oil pipeline accident caused by a drug-impaired employee. Consequently, we find that the Respondent's confidentiality interest outweighs the Union's interests with respect to identification of the person whose information led to the demand that three employees be tested for drug use.

As in *Pennsylvania Power*, however, the confidentiality defense is not a complete defense for the Respondent's refusal to provide any information about the evidence it relied on to mandate drug testing. Recognizing the Union's legitimate need for information regarding the substance of the report which aroused suspicions of drug use, we find that the Respondent was obligated to supply the Union with a summary of the informant's report.[2] It therefore violated Section 8(a)(5) of the Act by refusing to give this information.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Mobil Oil Corporation, West Coast Pipe Lines, Torrance, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

''(a) On request, provide the Union with a summary of the statement provided by the informant, on which the Respondent relied to form its ''suspicion'' and led it to perform drug tests on employees Guy Rodgers, Ronn McFadden, and Gregory Gill. This summary need not contain any information from which the identity of the informant can be ascertained, and any doubt whether the information can be used to identify the informant should be resolved in favor of nondisclosure.''

2. Substitute the attached notice for that of the administrative law judge.

[2] It is well established that the Respondent had no obligation to provide the informant's actual statement prior to an arbitration hearing. *Anheuser-Busch, Inc.*, 237 NLRB 982 (1978).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to bargain collectively with West Coast Independent Union as the representative of our employees in the appropriate bargaining unit of all employees described in article I of the current collective-bargaining contract with that labor organization, excluding all other employees, guards and supervisors as defined in the Act, by refusing to promptly furnish it with requested information that is relevant and reasonably necessary to processing grievances for arbitration.

WE WILL NOT in any like or related manner engage in conduct in derogation of our statutory duty to bargain in good faith with that labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights set forth above which are guaranteed by the National Labor Relations Act.

WE WILL, on request, provide the Union with a summary of the statements provided by the informant, on which we relied to form a ''suspicion'' and which led us to perform the drug tests. This summary need not contain any information from which the identity of the informant can be ascertained, and any doubt whether the information can be used to identify the informant should be resolved in favor of nondisclosure.

MOBIL OIL CORPORATION, WEST COAST PIPE LINES

Alice Joyce Garfield, for the General Counsel.
William C. Bottger Jr. and *Thomas A. Ryan (Latham & Watkins)*, of Los Angeles, California, for the Respondent.
Donald Ford, of Paso Robles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. I heard this case in Bakersfield, California, on November 8, 1989.[1] On August 30 the Regional Director for Region 31 of the National Labor Relations Board (the Board), issued a complaint and notice of hearing, based on an unfair labor practice charge filed on July 9 and amended on August 2, alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act). All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based on the entire record, on the briefs filed on behalf of the General Counsel and of Respondent, and on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

At all times material, Mobil Oil Corporation, West Coast Pipe Lines (Respondent), has been a Delaware corporation with an office and principal place of business located in Torrance, California, and has engaged in the production and distribution of petroleum products. In the course and conduct of those business operations, Respondent annually sells and ships goods or services valued in excess of $50,000 directly to customers located outside of the State of California. Therefore, I conclude that at all times material, Respondent has been an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[1] Unless stated otherwise, all dates occurred in 1989.

II. THE LABOR ORGANIZATION INVOLVED

At all times material, West Coast Independent Union (the Union), has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

The ultimate issue in this case is whether Respondent violated Section 8(a)(5) and (1) of the Act by its responses to the Union's request for information concerning Respondent's insistence that three employees submit to drug screening. Since it prevailed in a Board-conducted election in 1971, the Union continuously has been the bargaining agent for all employees described in article I of its current collective-bargaining contract with Respondent, excluding all other employees, guards, and supervisors as defined in the Act, an admittedly appropriate bargaining unit within the meaning of Section 9(b) of the Act. Independent of that bargaining relationship, in 1985 Respondent implemented an alcohol and drug control policy. That policy was, and is, intended to ensure a workplace free of substance abuse, thereby promoting safety for employees, the public, and the environment. Apparently because it agreed with the policy, the Union never challenged Respondent's formulation and implementation of that policy. Nor did it insist on including its terms in subsequent collective-bargaining contracts with Respondent. Thus, there is no mention of Respondent's alcohol and drug control policy in the current contract, which has a stated effective term of May 20, 1988, until midnight April 30, 1990.

The aspect of that policy involved in this proceeding pertains to a situation where an employee is suspected of having ingested alcohol or drugs, though not while on the job nor on Respondent's premises and, further, not to the degree that there has been actual impairment of that employee's job performance. An employee in such a situation is first given an opportunity to sign an authorization to obtain blood, breath, or urine samples, with those procedures being administered by personnel in Respondent's medical department. An employee who rejects signing that authorization is suspended for 10 days, without pay, to reflect on whether or not to adhere to his/her rejection. If the employee still declines to consent to screening at the end of that 10-day period, he/she is terminated.

Conversely, if the employee consents to screening and if the results are negative, that employee is restored to duty and is made whole for any pay loss resulting from his/her suspension. But if an employee tests positive, the medical department provides an opinion as to whether or not its personnel believes that the employee can be rehabilitated. If the opinion is that rehabilitation is not possible, the employee is terminated. However, if medical department personnel renders a contrary opinion, the employee is offered the choice of undergoing rehabilitation, receiving short-term disability benefits in lieu of time off for illness during the rehabilitation period, or of being terminated if he/she rejects rehabilitation.

This case originated with an off-duty/off-company premises poker game among some of Respondent's employees. Afterward, one of the players reported to his field supervisor that three unit employee-players—Guy Rodgers, Ronn McFadden, and Gregory Gill—had smoked marijuana and possibly had ingested cocaine during the course of the game.

However, before divulging that information to Respondent, that individual, also an employee of Respondent, extracted a promise that his identity would remain confidential. Respondent has kept its promise. While it is generally understood that the witness secured that promise because of feared retaliation, the record is devoid of particularized evidence that objectively would support the legitimacy of such fear.

The substance of that report was relayed up the management chain of command. Ultimately, a decision was made to insist that all three employees submit to drug screening. Consequently, on February 16 they were summoned to a meeting with Senior Employee Relations Coordinator Bill Traylor and Field Supervisor Terry Parrent. The above-described alcohol and drug control policy's options were explained to them. In the end, all three signed authorizations for screening. Rodgers and Gill did so during the meeting. McFadden returned to Respondent's facility later that same day to do so, following his suspension for not having done so during the meeting, as had Rodgers and Gill. Each employee tested positive. Later, all three of them were judged eligible for, and successfully underwent, rehabilitation.

Meanwhile, communications concerning the screening demand were exchanged between the Union and Respondent. In them, the Union requested production of the information that had generated Respondent's screening demand; Respondent repeatedly replied only that such information was confidential. For example, Taft Area Shop Steward Dale Hood had attended part of the February 16 meeting as the representative of the three employees. It is not disputed that, during that meeting, he had asked the basis of Respondent's ''reasonable cause'' for insisting that the three employees be screened, but had been told by Traylor ''that it was basically company confidentially [sic]. They didn't need to disclose that information.'' Similarly, it is not controverted that Union President Donald Ford twice asked for this same information during February telephone conversations, but was told both times by Traylor that it was confidential.

As these responses show, Respondent initially did not inform the Union that the source of its information had been a report by an employee. Nevertheless, some of the employees at least suspected as much. For, Hood testified that Rodgers, McFadden, and Gill discussed the fact that employee Kevin Krist had been involved in their activity and, also, had been present at Respondent's facility on February 16, but neither had been included in the meeting with Traylor and Parrent, nor had been subjected to screening. Similar discussions centered on employee Val Flores, who also had been a poker player.

A supervisor reported to Traylor that Krist had complained bitterly about assertedly being told by Hood that Respondent had identified him (Krist) as the informant. This led to a meeting in late February at which Traylor warned Hood that Respondent would take action to prevent harassment of Krist or of any other employee intimidated by coworkers regarding the incident. However, not until October 26, at the earliest, did Respondent actually tell the Union that it had been an employee's report that had led to insistence that Rodgers, McFadden, and Gill submit to screening. Further, Traylor acknowledged that Respondent never offered the Union the option of discussing the substance of the information provided by the source, without divulging the source's name.

When he testified, Traylor acknowledged Respondent's willingness, and apparently its statutory obligation as well, to disclose this type of information in the usual situation: ''if there would have been no request for confidentiality, there would have been [no] reason for us to guard the information and we would have exchanged it with the [Union.]''[2] However, as Respondent's counsel explained during his opening statement:

> The individual came forward with the understanding and with the request that that individual's identity not be disclosed. Management has honored that commitment and has felt obliged to adhere to its agreement to protect the privacy of the individual who provided it with the information and to preserve that confidentiality.

Concerned about the procedure followed by Respondent, and by its refusal to disclose the information that had led to that procedure, the Union filed a grievance, challenging Respondent's ''refus[al] to provide the Union with evidence in support of [Respondent's] charge against the grievants.'' In its grievance, the Union stated expressly that it believed there was ''no factual evidence'' to support Respondent's screening demand and, accordingly, that Respondent should not have insisted on screening, especially as Parrent had admitted that there had been no improper job performance by any of the three employees. The Union also pointed out that it was concerned about the longer range implications of Respondent's February 16 conduct: ''Obviously, the company's method can be used to force any employee into a rehabilitation program. The Union disagrees with an implementation of such a program.'' However, due to the absence of a provision in the contract pertaining to the alcohol and drug control policy, Respondent countered that the subject was not a grievable one. That contention was the subject of an arbitration conducted on October 26, 2 weeks before the hearing in this matter.

Finally, Ford testified that had Respondent supplied the requested information, he did not intend to contact the witness to interview him prior to arbitration. Instead, testified Ford, the Union ''would . . . subpoena him to the arbitration and ask him his side of the story.'' Ford explained in this connection that, ''I would not contact him directly because the company is the one who took the information . . . [and] are the ones that have to answer to what took place. They would be the ones that I would want the evidence from. They're the ones that took it and used it.'' Indeed, Ford testified that he never had asked Rodgers, McFadden, and Gill if they actually had used drugs, because, ''if the company has the evidence then the company's well within their right, I mean, if the evidence is legit.''

Recently, the Board concluded that, to the extent it applies to employees already working for an employer, a ''drug/alcohol testing requirement is a condition of employment because it has the potential to affect the continued employment of employees who become subject to it.'' *Johnson-*

[2] Indeed, in connection with the processing of grievances, art. XIII, sec. 151 of the current contract obliges each party ''to furnish the other party with all information in its possession regarding such grievance which may be necessary to a full understanding of the subject matter of the complaint and to facilitate the prompt handling of complaints.''

Bateman Co., 295 NLRB 180 at 183 (1989). Of course, that is the situation presented in the instant case. As discussed above, Respondent's policy, as applied to suspected substance abusers, contemplates termination if an employee declines to undergo screening, or if Respondent's medical personnel determines that a screened employee cannot be rehabilitated successfully, or if rehabilitation is not successful in the case of an employee who participates in it. Consequently, Respondent was obliged to bargain with the Union concerning the terms of its alcohol and drug control policy.

That obligation is not altered by fact that no mention of the policy is contained in the current collective-bargaining contract. For, Respondent has presented no evidence of Union conduct that would satisfy the clear and unmistakable standard imposed to establish existence of waiver of the right to bargain about that mandatory subject during the contract's term. Moreover, that statutory right is not diminished by the fact that the Union does not seek to bargain about the policy's goals and procedures, but instead seeks to bargain only about the basis for selecting employees to whom the policy has been, and will be, applied. Nothing in the Act obliges a bargaining agent to negotiate about all aspects of a mandatory subject or, alternatively, about none at all. Procedures for selecting employees to undergo screening are no less an integral component of Respondent's alcohol and drug control policy than the means used to actually screen and, if warranted, to rehabilitate them. In fact, even where the Board has concluded that there is no duty to bargain about formulation of particular programs affecting employees, it has held that there is, in effect, a duty to bargain about application of such programs to employees in particular situations. See, e.g., *Capital Times Co*., 223 NLRB 651 (1976).

''There can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties.'' *NLRB v. Acme Industrial Co*., 385 U.S. 432, 432–436 (1967). Since the Union's concern centered on Respondent's reason for having selected Rodgers, McFadden, and Gill for screening, the information on which Respondent had relied in making that decision could not have been more central to that concern. That conclusion is not altered by the fact that the Union did not ask the three affected employees whether or not they had ingested drugs prior to February 16. Nor is it affected by the screening's assertedly conclusive proof of that fact, followed by all three employees' willingness to undergo rehabilitation. For, the Union is not challenging the employees' conduct. Rather, it is questioning the basis for Respondent's decision to suddenly select these employees and demand that they submit to the intrusive process of screening, where there has been no showing of job misperformance nor of misconduct on Respondent's worktime or premises. Only Respondent could supply the information pertaining to the Union's limited concern.

In these circumstances, the information sought by the Union was relevant for proper performance of its duties as a bargaining agent. But that conclusion does not end the inquiry. A bargaining agent's right to information is not absolute. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 318 (1979). During almost the entire period between the Union's initial request on February 16 and the hearing in this matter Respondent told the Union that the information, on which it had based its screening demand, was confidential. No further explanation was provided. Yet, even in situations where a legitimate confidentiality interest exists, so preemptory a response does not necessarily discharge an employer's statutory obligation to provide relevant information. Rather, an employer has ''a duty to come forward with some offer to accommodate its [confidentiality] concerns with its bargaining obligation.'' (Citations omitted.) *Maben Energy Corp*., 295 NLRB 149, 150 at fn. 1 (1989). See generally *E. W. Buschman Co. v. NLRB*, 820 F.2d 206, 209 (6th Cir. 1987), and *Safeway Stores v. NLRB*, 691 F.2d 953 (10th Cir. 1982). An unexplained response of confidentiality, unaccompanied by some satisfactory alternative means for providing information needed by a bargaining agent, does not satisfy that obligation.

Furthermore, there is no basis for asserting a defense of confidentiality in view of the evidence presented in this case. The Board has acknowledged as a general proposition that, ''should the likelihood of witness coercion be established at the hearing, the necessity and relevance of the requested information would require further inquiry.'' *Conoco Chemicals Co*., 275 NLRB 39, 40 (1985). However, Respondent has not claimed that *it* feared retaliation against its informant. Nor has it presented any evidence that would support such a contention, had it been advanced. For example, there is no evidence of past retaliation by the Union against employees who reported misconduct by coworkers or who otherwise provided evidence useful to Respondent in processing grievances. Nor is there evidence of direct threats by union agents against the employee who made the report leading to the February 16 screening demand. In fact, when Krist reported that he had been accused of being the individual who had made that report,[3] Traylor had summoned Hood and had warned that discipline would be imposed against those who harassed any employee in connection with the screening demand. So far as the record discloses, there were no subsequent comments directed at potential employee-witnesses in connection with the incident. Accordingly, Respondent possessed the necessary for means for protecting its informant, short of impairing the Union's ability to fully represent an employee for whom it was the bargaining agent.

In fact, any contention of realistic fear of informant harassment is obliterated completely by Traylor's admission that Respondent ordinarily would have disclosed that individual's identity to the Union, except for the promise of confidentiality made to him. ''[A] preference for confidentiality on the part of . . . employees does not nullify [a bargaining agent's] right to the information.'' (Citations omitted.) *WCCO Radio v. NLRB*, 844 F.2d 511, 515 (8th Cir. 1988). See also *New Jersey Bell Telephone Co*., 289 NLRB 318, 319–320 (1988); *Detroit News*, 270 NLRB 380 (1984), enfd. 759 F.2d 959 (D.C. Cir. 1985). ''Otherwise, virtually all requests for information on activities leading to disciplinary or

[3] Respondent chose to characterize such conduct as harassment. But, Krist was not called as a witness to provide direct evidence about what had been said to him by other employees. Nor is there independent evidence that employee remarks to Krist had been accompanied by express or implied threats of retaliation against him. Indeed, it is as inferable that the remarks to Krist were intended as a device for securing an off-guard admission that he had been the informant, as it is to infer that the employees were trying to harass Krist. If the former is the fact, then Krist's discomfort was a direct consequence of Respondent's own agreement to a secretive approach to an informant's report.

potential legal action would be found to have such status.'' *Postal Service*, 289 NLRB 942, 944 (1988).

Furthermore, it hardly can be maintained with persuasion that, in making such a report, an employee is disclosing sensitive personal information that threatens his/her own ego and sense of self-worth. To the contrary, in doing so, that employee fairly can assume that the report will lead to employer-action directed at coworkers. In addition, as is shown by Traylor's testimony that Respondent ordinarily would disclose the informant's identity to the Union, Respondent has no established policy of maintaining confidentiality concerning information provided by employees about other employees. And, as pointed out above, there is no direct evidence of any concrete basis for the fear of potential retaliation expressed by the informant to Respondent. In these circumstances, Respondent has failed to establish a statutorily countenanced basis for a confidentiality defense. See, e.g., *Salt River Valley Water Users' Assn. v. NLRB*, 769 F.2d 639, 642–643 (9th Cir. 1985). To the contrary, its curt assertion of confidentiality serves only to frustrate the Union's attempt to procure needed information on the basis of, at best, an ad hoc decision based on the parochial speculation of a single employee.

That conclusion is not mitigated by Respondent's October 26 disclosure that, in selecting those three employees on February 16, it had been relying solely on the report of a witness. Although obviously a more forthcoming response than its previous ones, Respondent still was not willing to make a full disclosure. It remained unwilling to disclose the informant's identity. Nor did it offer to reach an accommodation in that respect. That is, so far as the record discloses, it was not wiling to disclose the substance of that individual's report. Accordingly, the belatedly provided information advanced the Union's effort to determine the basis for Respondent's selection of Rodgers, McFadden, and Hill for drug screening, but the advance was not a long one. Instead, it served only to narrow the number of possibilities, while continuing to bar the Union from access to information ''both relevant and necessary to enable the Union to make an intelligent judgment with respect to the merits of its grievance and a decision whether to proceed to arbitration.'' (Footnote omitted.) *Transport of New Jersey*, 233 NLRB 694, 695 (1977).

That conclusion is not changed by the fact that, had it received the name of the informant, the Union did not intend to interview him prior to arbitration. The usual assumption is that information should be submitted to a bargaining agent in connection with grievance processing, ''to encourage resolution of disputes, short of arbitration hearing, briefs and decision so that the arbitration system is not 'woefully overburdened.''' *Pfizer, Inc*., 268 NLRB 916, 918 (1984), enfd. 763 F.2d 887 (7th Cir. 1985) (quoting from *NLRB v. Acme Industrial Co*., supra). But no case holds that a bargaining agent can use requested information solely for that purpose. Nor does any case hold that it must be used for that purpose. Rather, the information only need be ''of use to the union in carrying out its statutory duties and responsibilities.'' *NLRB v. Acme Industrial Co*., supra, 385 U.S. at 437.

One of those duties and responsibilities is to provide representation, on behalf of employees for whom a union serves as bargaining agent, during the arbitration stage of disputes resolution. See generally *Vaca v. Sipes*, 386 U.S. 171 (1967). Here, the Union's grievance challenged specifically the sufficiency of the information that led Respondent to insist that Rodgers, McFadden, and Gill submit to screening. As Respondent acknowledges, that insistence was based solely on the report of one other employee. If provided with the individual's name, the Union intended to call him as a witness to describe the substance of his report. In that way, the arbitrator could decide whether or not the report provided an adequate basis for Respondent's insistence that particular employees submit to screening. Inasmuch as that was the issue posed by the grievance, ''the information sought by the [Union] was relevant to its presentation of [its] grievance,'' *NLRB v. Pfizer, Inc*., 763 F.2d 887, 890 (7th Cir. 1985), and, consequently, to performance of an important aspect of the duties and responsibilities owed to employees whom it represented. Accordingly, the fact that the Union did not seek to conduct a prearbitration interview of Respondent's informant, if provided with his name, does not nullify the relevance of the requested information to a statutory duty and responsibility of the Union.

Nor is Respondent relieved of its obligation to provide information by its challenge to arbitrability of the grievance. True, the Board has agreed that information need not be disclosed where it is certain that a grievance cannot be arbitrated. See *Calmat Co*., 283 NLRB 1103 (1987). However, Respondent has not presented evidence that would establish that, at the time of the information requests, there was no probability that an arbitrator could conclude that the dispute, concerning Respondent's February 16 insistence on drug screening, could be arbitrated under the provisions of its contract with the Union. ''[B]efore a union is put to the effort of arbitrating even the question of arbitrability, it has a statutory right to potentially relevant information necessary to allow it to decide if the underlying grievances have merit and whether they should be pursued at all.'' *Safeway Stores*, 236 NLRB 1126 fn. 1 (1978). As the court concluded in enforcing that decision, ''This requirement of grievability is not now a part of federal labor law, and we decline to add it.'' *NLRB v. Safeway Stores*, 622 F.2d 425, 430 (9th Cir. 1980).

There can be no dispute about the societal interest in preventing the harm that substance abuse potentially can cause coworkers, the public, and the environment when employees try to work while influenced by alcohol or drugs. However, Respondent is not a solo actor in the scenario of its prevention. Under the conclusion of *Johnson-Bateman Co*., supra, a bargaining agent such as the Union shares the stage in formulating programs to minimize that abuse and its harm. Nothing in this record shows a lack of concern by the Union with the problem. To the contrary, its officials made plain the Union's agreement with the goals of Respondent's policy. Nonetheless, generalized goals are but a single aspect of a substance abuse program. The methods of implementing those goals, through formulation of procedures for application in particular situations, are of no less concern to a bargaining agent. Here, Respondent deprived the Union of its right to participate in that aspect of the alcohol and drug control policy by refusing, without legitimate reason, to provide information necessary to development of criteria for application of that policy to particular employees. In so doing, Respondent violated Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

Mobil Oil Corporation, West Coast Pipe Lines has committed an unfair labor practice affecting commerce by refusing to disclose the source of its information about off-duty drug use by employees to West Coast Independent Union in connection with the processing of a grievance concerning the basis for selecting particular employees for drug screening, thereby violating Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that Mobil Oil Corporation, West Coast Pipe Lines engaged in an unfair labor practice, I shall recommend that it be ordered to cease and desist therefrom and that it be ordered to take affirmative action to effectuate the policies of the Act. With respect to the latter, it shall be ordered to make available to West Coast Independent Union the name of the employee whose report led to the selection of Guy Rodgers, Ronn McFadden, and Gregory Gill for drug screening on February 16, 1989.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Mobile Oil Corporation, West Coast Pipe Lines, Torrance, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with West Coast Independent Union as the representative of employees in the appropriate bargaining unit of all employees described in article I of the current collective-bargaining contract with that labor organization, excluding all other employees, guards, and supervisors as defined in the Act, by refusing to promptly furnish it with requested information that is relevant and reasonably necessary to the processing of grievances for arbitration.

(b) In any like or related manner engaging in conduct in derogation of its statutory duty to bargain in good faith with West Coast Independent Union, and in any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, furnish West Coast Independent Union with the name of the employee whose report led to the selection of Guy Rodgers, Ronn McFadden, and Gregory Gill for submission to drug screening on February 16, 1989.

(b) Post at its Taft, California facility copies of the attached notice marked ''Appendix.''[5] Copies of the notice on forms provided by the Regional Director for Region 31, after being duly signed by its authorized representative, shall be posted by Mobil Oil Corporation, West Coast Pipe Lines immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to ensure that those notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Mobil Oil Corporation, West Coast Pipe Lines has taken to comply.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''